

RESPONSE TO FINAL OFFICE ACTION MAILED MAY 30, 2007
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JUL 30 2007 S/N: 10/812,139
D.KT. NO.: VRTS0702

REMARKS

The present response is intended to be fully responsive to the rejection raised in the Office Action, and is believed to place the application in condition for allowance. Further, the Applicants do not acquiesce to any portion of the Office Action not particularly addressed. Favorable reconsideration and allowance of the application is respectfully requested.

In the Office Action, the Examiner noted that claims 1-19 are pending, and that claims 1-10 and 12-19 are rejected. The Examiner objected to claim 11. By this response, claims 1-19 continue without amendment. In view of the following discussion, Applicants submit that none of the claims now pending in the application are anticipated under the provisions of 35 U.S.C. §102. Thus, Applicants believe that all of these claims are now in condition for allowance.

I. ALLOWABLE SUBJECT MATTER

The Examiner objected to claim 11 as being dependant on a rejected base claim, but would be allowable if rewritten in independent form. Applicants thank the Examiner for indicating allowable subject matter. As discussed below, however, Applicants believe that independent claim 9, from which claim 11 depends, is patentable over the cited reference. As such, Applicants contend that dependent claim 11 is also patentable over the cited reference. Accordingly, Applicants respectfully request that the objection to claim 11 be withdrawn.

II. RESPONSE TO §102(e) REJECTION OF CLAIMS 1-10 and 12-19

The Examiner rejected claims 1-10 and 12-19 as being anticipated by U.S. Patent No. 5,734,814 issued to Corbin, et al. ("Corbin"). Applicants respectfully traverse the rejection.

The Office alleges that Corbin discloses a system with a cache for storing data and parity of checkpoints. See Final Office Action, pg. 2, citing Corbin, Col. 2, Lines 1-3. The Office also alleges that Corbin discloses a system wherein the checkpoint data can be distributing across disk drives using a RAID-5 configuration for data and parity information. See Final Office Action, pg. 2, citing Corbin, Col. 2, Lines 16-22. The

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office also alleges that Corbin discloses that the RAID-5 configuration can have multiple host-client relationships, which the examiner considers can be multiple servers. See Final Office Action, pg. 2, citing Corbin, Col. 1, Lines 33-42.

Corbin generally teaches a computing system utilizing redundant storage devices arranged in the RAID disk array, data is stored in the computing system using a memory cache created from system memory and the disk memory. See Corbin, at abstract. A checkpoint module detects a fault in the computing system and generates a fault indication, and a cache manager writes data and parity to the memory cache in a first mode, and writes data and parity to the storage device in a second mode. *Id.* In response to the fault indication, the checkpoint module copies the data contained in the cache to the disk array, and switches the cache manager from the first mode to the second mode. *Id.*

In contrast, the applicant's invention, as recited in claim 1, is:

A method for providing fault tolerant checkpoint data within a server cluster comprising a production server and a plurality of backup servers comprising:

accessing checkpoint data within the production server;

distributing the checkpoint data; and

storing the distributed checkpoint data on the plurality of backup servers.

Corbin does not teach or suggest the claimed limitations a production server and a plurality of backup servers comprising accessing checkpoint data within the production server, distributing the checkpoint data, and storing the distributed checkpoint data on the plurality of backup servers. The Office incorrectly cites col. 2, lines 16-22 in Corbin as a teaching or suggestion of the above claimed limitations. First, the cited portion discusses copying cached information to the drives of the RAID-5 configuration, but not backup servers. The RAID-5 is a collection of disk drives and does not operate as a backup server. The Office has not cited any teaching or suggestion of distributing the checkpoint data from the RAID-5 configuration of a production server to the plurality of backup servers.

The Office further stated that the limitation of distributing checkpoint data within a production server among a plurality of backup servers in Applicants' claims is a

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recitation of intended use. (Final Office Action, p. 5). The Office then stated that "a recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art to patentably distinguish the claimed invention from the prior art." (Final Office Action, p. 5). The cited limitation, however, is not an "intended use."

In particular, Applicants' claim 1 recites a step of "storing the distributed checkpoint data on the plurality of backup servers." Applicants' claim 17 recites a similar feature. This is not an intended use of the invention, but rather an action performed by the invention, i.e., an action of storing the distributed checkpoint data. Moreover, Applicants' claims 1 and 17 are process (method) claims, not an apparatus claims. There is no requirement that a process claim recite any "structural differences" between the invention and the prior art.

Applicants claim 9 recites a plurality of backup servers that store distributed checkpoint data. Claim 14 recites a similar feature. The storage of distributed checkpoint data is a function of the plurality of backup servers, not an intended use. The courts have long held that functional language must be accorded patentable weight. In re Land, 151 USPQ 621 at 635-36 (C.C.P.A., 1966); Intel Corp. v. U.S. Int'l Trade Comm'n, 20 USPQ2d 1161, 1171 (Fed. Cir. 1991). As described above, Corbin does not teach or suggest distribution of checkpoint data among a plurality of backup computers.

Independent claims 9, 14, and 17 recite similar limitations as independent claim 1. Furthermore, dependent claims 2-8, 10, 12-13, 15-16, and 18-19 depend, either directly or indirectly, from independent claims 1, 9, 14, and 17 and recite additional features therefor. As such and for the exact same reasons set forth above, Applicants submit that none of these claims is anticipated by the teachings of Corbin.

Accordingly, Applicants submit that claims 1-10 and 12-19 are patentable over the cited reference and, as such, fully satisfy the requirements of 35 U.S.C. §102. Applicants respectfully request withdrawal of the present rejection.

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In view of the foregoing, the Applicants submit that none of the claims presently in the application are anticipated under the provisions of 35 U.S.C. § 102. Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Office believes that any unresolved issues still exist or if, in the opinion of the Office, a telephone conference would expedite passing the present application to issue, the Office is invited to call the undersigned attorney directly at 732-917-6320 or the office of the undersigned attorney at 732-978-7100 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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